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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SASA MASLIC, individually and on behalf
of putative class, IVAN DRZAIC, ROBERT
HERNAUS, LEOPOLD HUBEK, LEON
HUDOLDETNJAK, ELVIS KOSCAK,
TOMICA PANIC, STJEPAN PAPES,
ZELJKO PULJKO, DARKO SINCEK,
DAVID STANTE, NEDELJKO ZIVANIC,
GOGO REBIC, and MITJA POGOREVC,

Plaintiffs,

v.

ISM VUZEM D.O.O., ISM VUZEM USA,
INC., VUZEM USA, INC., HRID-MONT
D.O.O., IVAN VUZEM, ROBERT VUZEM,
EISENMANN CORPORATION, TESLA,
INC., and DOES 1 THROUGH 50,

Defendants.

Case No. 5:21-cv-2556-BLF

**DECLARATION OF AARON M. BERNAY
IN SUPPORT OF MOTION OF COUNSEL
FOR EISENMANN CORPORATION TO
WITHDRAW**

Judge: Hon. Beth L. Freeman
Hearing Date: April 11, 2024
Time: 9:00 a.m.
Courtroom: 3, 5th Floor

1 I, Aaron M. Bernay, declare as follows:

2 1. I am over eighteen (18) years of age and have personal knowledge of the statements
3 in this Declaration.

4 2. I am outside counsel to Eisenmann Corporation (“Eisenmann USA”) and a Partner
5 of the law firm Frost Brown Todd LLP in Cincinnati, Ohio.

6 3. I am counsel of record to Eisenmann USA in this proceeding. Along with Boies
7 Schiller Flexner LLP, Frost Brown Todd LLP has represented Eisenmann Corporation before this
8 Court on three related matters – the instant action, *Lesnik v. Eisenmann SE, et al.* (5:16-cv-01120-
9 BLF), and *Novoselac v. ISM Vuzem d.o.o.* (5:21-cv-08654-BLF).

10 4. Eisenmann USA settled *Lesnik* in March 2020 and this Court granted Eisenmann
11 USA’s motion to dismiss with prejudice in *Novoselac* on July 19, 2022.

12 5. In July 2019, certain of Eisenmann USA’s corporate affiliates petitioned for
13 insolvency in Germany. As a standalone entity, Eisenmann USA did not file for bankruptcy in the
14 United States and continued to service its North American projects. However, the company
15 eventually found that it was unable to operate as a going concern absent technical assistance and
16 support from its German affiliates.

17 6. Eisenmann USA sold its environmental technology business in November 2020 and
18 wound down its remaining US operations, including the paint shop division involved in this
19 litigation, on or around March 2021. Eisenmann USA appointed a corporate restructuring officer
20 to preside over the liquidation of its remaining assets to commercial creditors.

21 7. Eisenmann USA established a litigation reserve to defend against the claims brought
22 in *Maslic* and *Novoselac*. Given the passage of time, attendant legal expenses, and subsequent
23 distribution of assets, Eisenmann USA has informed counsel that it no longer has sufficient funds
24 to pay for legal representation in this proceeding.

25 8. I have had several discussions with Plaintiffs’ counsel over the last two years
26 regarding Eisenmann USA’s tenuous financial condition. I also apprised the Court in May 2021
27 that Eisenmann USA was no longer a going concern. *Lesnik*, Dkt. No. 579.
28

